IN THE COURT OF APPEAL OF THE CAYMAN ISLANDS

CRIMINAL APPEAL 27/15
IND 74/15
C05459/2015

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

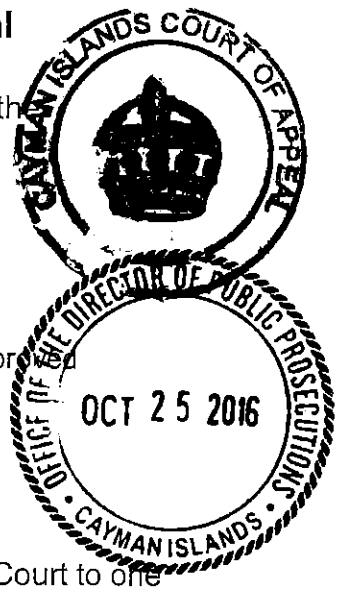
- and

Shane E Connor

Appellant

BEFORE

The Hon Sir George Newman, Justice of Appeal
The Hon Sir Richard Field, Justice of Appeal
The Hon (Cecil) Dennis Morrison, Justice of Appeal



Appearances: Tricia Hutchinson for DPP/Amelia Fosuhene (Brady Law)for the appellant.

JUDGMENT

Revised from transcript of oral judgment given on 23 August 2016 and Approved
Released 1 September 2016

The Honourable Dennis Morrison, JA

On 18 September, 2015, the appellant entered pleas of guilty in the Grand Court to one count of burglary and one count of attempted burglary contrary to s. 243(1)(b) and 243(1)(a) respectively of the Penal Code. On the 19 November 2015, after a sentencing hearing before Mettyear, J, the appellant was sentenced to 30 months' imprisonment on each count to run concurrently. The court ordered that the time spent on remand by the appellant should count towards the sentence. The appellant has appealed against his sentence on the ground that the sentencing judge failed to consider properly the matters put forward by way of mitigation of sentence.

We take the circumstances of the offences to which the appellant pleaded guilty from the sentencing judge's summary of the facts. At approximately 10 o'clock on the morning of 7 September 2015, the appellant attempted to gain entry to a residential unit in George Town. The attempt involved the use of a crowbar on a closed and secured window. However, with the aid of security devices, the residents of that unit became aware of what was happening and the appellant was disturbed. The police were summoned and, upon their quick arrival, made checks in the area. The appellant was

spotted nearby in the vicinity of another unit in the same area and, after a chase by the police, he was arrested. He had with him items of property which, as it would turn out, had been taken from the second unit.

The appellant was 38 years old at the time of his arrest. He had many previous convictions, 25 in all, for offences ranging from disorderly conduct to possession of an unlicensed firearm. He had three previous convictions for burglary, the last of which was a commercial burglary for which he was sentenced to four years' imprisonment in July 2010.

In determining the appropriate sentence to impose on the appellant, the judge took into account the regret and remorse expressed by him to the author of the social inquiry report and his assertion that he had offended to help his parents who were in need. Further information was also placed before the judge in mitigation of sentence. Despite the fact that the author of the social inquiry report assessed the appellant as being at high risk for further offending, the court was invited to consider a non-custodial or possibly a suspended sentence. But, given that the offences to which the appellant had pleaded guilty were serious offences by a repeat offender, the judge determined that a non-custodial sentence could not be justified. The judge therefore considered that, in terms of the Cayman Islands' Sentencing Guidelines, the offences in combination equated to an offence of medium culpability falling within the category two for harm. Accordingly, the offences attracted a starting point of four years' imprisonment in a range of two to six years.

Notwithstanding the plea in mitigation offered by Miss Fosuhene on the appellant's behalf, the judge took the view that there were no mitigating factors that could make any real difference to sentence. Therefore, applying the plainly aggravating factor of the appellant's previous convictions, in particular his recent conviction for burglary, the judge determined that, in a contested case, a sentence of five years' imprisonment would have been appropriate. This the judge discounted by one-third, giving full credit to the appellant despite his attention having been drawn to the decision of this court in R v Dilbert and Samuels [2010] 1 CILR 10, in which this court confirmed the power of a judge on a guilty plea to give less than full credit in cases, such as this case undoubtedly was, where the evidence against the offender is overwhelming. The judge then gave a further 25 percent discount to allow for the additional matters which had been brought to his attention and so, by this means, arrived at a sentence of 30 months' imprisonment.

In support of the challenge to the sentence, Miss Fosuhene drew to our attention a series of events which had occurred in 2011. These events, it was said, resulted in the appellant spending a total of 30 months in custody in respect of four offences for which he was never convicted. As a result of these matters, it was submitted the appellant had found himself "in a very hopeless situation, out of work and without any means of support or place to live". These and other matters had been put before the judge by way of explanation and mitigation but appeared to have been wholly rejected.

Responding for the Crown, Miss Hutchinson submitted that it would have been wholly inappropriate for the sentencing judge to have taken any other approach. We entirely agree. The considerations which led to the appellant being remanded in custody for the 30-month period referred to were not before the judge. And in any event, as Miss Hutchinson pointed out, the decision to engage in conduct which might lead to his further incarceration, as indeed it did, was entirely the appellant's. In our view, the judge's specific reference to the matters advanced in the appellant's favour in the social inquiry report amply demonstrates that he had in mind all matters that could properly be urged in mitigation. We, therefore, see no reason to dissent from the judge's analysis of the aggravating and mitigating factors.

Before us, Miss Fosuhene was in the end unable to make good, and therefore did not pursue, the contention that the material placed before the judge was insufficient to enable him to deal appropriately with the question of mitigation. However, Miss Fosuhene did submit that the sentence was manifestly excessive in the light of the information shown to the judge. For our part, we are quite satisfied that the judge was fully apprised of all the relevant facts. There is, therefore, no basis to suggest that he erred in anyway in arriving at the level of discount offered.

For these reasons, we are of the view that no basis has been shown upon which this court can properly interfere with the judge's very careful exercise of his sentencing discretion, and we decline to do so. The appeal is accordingly dismissed.

Newman JA

Field JA

Morrison JA

CAYMAN ISLANDS
CRIMINAL FORM 18
RULE 50(1) & 51(1)

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NOTIFICATION TO AUTHORITIES OF RESULT OF APPEAL

To: The Attorney General

This is to give you notice that **SHANE EDWARD CONNOR** having sought leave to appeal against *his* Sentence passed upon *him* by the Grand Court on the 19 day of November, 2015 as set out below:

IND0074/2015 Attempted Burglary
30 MONTHS IMPRISONMENT TO RUN CONCURRENT.
TIME SPENT IN CUSTODY TO BE DEDUCTED.

The Court of Appeal has finally determined the said appeal, and has this **23 day of August 2016** given judgment therein to the effect following:

1. **Application for leave to appeal sentence refused.**
2. **Sentence affirmed.**
3. **Transcript of reasons given orally to be released.**

Dated this 1 day of September, 2016

Registrar

Tricia Hutchinson for DPP/Amelia Fosuhene (Brady Law)

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
OCT 25 2016
CAYMAN ISLANDS