

1 **IN THE GRAND COURT OF THE CAYMAN ISLANDS**
2 **CRIMINAL SIDE**

3
4 **INDICTMENT NOs: 0059/2012**
5 **&**
6 **0058/2013**

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8
9 **THE QUEEN**

10
11 **V**

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13 **MARLON HUDSON DILLON**

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17 **Appearances:**

**Ms. Cheryll Richards Q.C., DPP, and Ms.
Nicole Petit, Crown Counsel**

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20 **Ms. Sallie Bennett-Jenkins Q.C. instructed**
21 **by Amelia Fosuhene and James Stenning of**
22 **Stenning & Associates for the Defendant**
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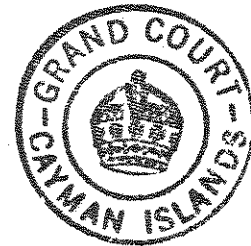
24 **Before:**

The Hon. Mr. Justice Charles Quin

25 **Submissions heard:**

16TH October 2014

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27 **SENTENCE RULING**
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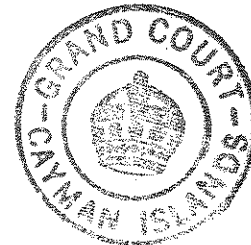
INTRODUCTION

1. Indictment #0015 of 2012 relates to the robbery of the Buckingham Square, West Bay Road, branch of the Cayman National Bank on the 28th of June 2012, now known as “The CNB Robbery”.

The five (5) persons charged on Indictments #60 #62 and #63 of 2012 and 14 of 2013 with the CNB Robbery were David Tamasa, Rennie Cole, George Mignott, Ryan Edwards and Andre Burton. Unlike Marlon Dillon all five Defendants pleaded not guilty to the counts on the Indictments.

2. Indictment #0058/2013 relates to the robbery of the Eclipse Drive branch of West Star TV Ltd., on the 24th day of May 2012, now known as “The West Star Robbery”.

The four (4) persons charged on Indictment #66 of 2012 with the West Star Robbery were Andre Burton, George Mignott and David Tamasa. Ryan Edwards was charged with aiding and abetting. Unlike Marlon Dillon, all four Defendants pleaded not guilty to the counts on the Indictment.



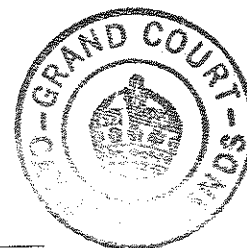
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THE CNB ROBBERY

3. On the 23rd August 2012 the Defendant Marlon Dillon pleaded guilty to Count 2 of Indictment #59 of 2012, Robbery, contrary to s.242(1) of the Penal Code (2010 Revision). The particulars of that offence are that the Defendant, on the 28th June 2012, at Cayman National Bank, Buckingham Square, West Bay Road, Grand Cayman, Cayman Islands, together with others, stole in excess of CI\$502,436.17 comprising United States and Cayman Islands currency, the property of Cayman National Bank, and at the time of so doing put persons in fear of then and there being subject to force.

4. On the 11th September 2012 the Defendant Marlon Dillon pleaded guilty to Count 1 of Indictment #59 of 2012, Possession of an Imitation Firearm, contrary to s.18(6) of the Firearms Law (2008 Revision). The particulars of that offence are that the Defendant, 28th June 2012, at Cayman National Bank, Buckingham Square, West Bay Road, Grand Cayman, Cayman Islands, together with others, had in his possession an imitation firearm with intent to commit an offence, namely, Robbery.

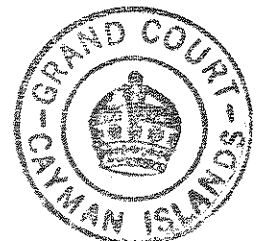
5. At about 9:34 a.m. on Thursday the 28th June 2012 an armed robbery was committed at the Buckingham Square Branch of the Cayman National Bank when three offenders entered the bank – two armed with firearms – and threatened staff and members of the public. In total the robbers stole over \$500,000.00 in US and CI currency.



1 6. In his Sentencing Judgment dated the 29th October 2013 Justice Henderson found
2 David Tamasa to be the ringleader in the planning and the supply of the weapons
3 for use in the robbery. The Defendants Mignott, Edwards and Marlon Dillon
4 entered the bank disguised. Two of these men were armed with what appeared to be
5 firearms. Justice Henderson found that Defendant Marlon Dillon made a threat to
6 kill one of the bank tellers and that Marlon Dillon's role, as with the role of the
7 other two masked men was to subdue those who found themselves in the bank. The
8 Defendant Burton acted as the getaway driver. The Defendant Cole posed as a
9 customer, and in so doing, deliberately distracted the security guard at the front
10 door.

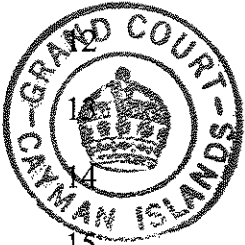
11 7. Justice Henderson found that several bank employees have suffered considerable
12 shock as a result of this daylight robbery. There was a high level of anxiety in the
13 bank in the wake of the robbery. As a result of the robbery several employees have
14 required counselling and some had to be transferred to another branch of the bank.
15 The President of CNB has stated that the robbery is the largest in the history of the
16 Cayman Islands. The vast majority of the money has not been recovered and, bank
17 employees have spent hundreds of hours investigating, recovering from and
18 analyzing the robbery. The robbery caused a very significant disruption in the daily
19 routine and business of this locally-owned bank.

20 8. On the 29th October 2013 all five Defendants – Tamasa, Cole, Mignott, Edwards
21 and Burton – were found guilty by the jury of robbery and possession of an
22 imitation firearm.



1 9. Justice Henderson reviewed the Chief Justice's Sentencing Guidelines¹ in relation
2 to Robbery and the UK Sentencing Guidelines and concluded that this was a
3 professionally planned commercial robbery. However, Justice Henderson found
4 that the fact that the firearm was an imitation, and the fact that the planning and
5 execution of the Robbery was somewhat less sophisticated than many professional
6 robberies, convinced him that the starting point for this CNB robbery for a person
7 pleading not guilty with no previous convictions was 12 years.

8 10. *Tamasa's Sentence:* At the time of sentencing on the CNB Robbery Tamasa had
9 just been found guilty of the West Star Robbery which had taken place on the 24th
10 May 2012 – just 4 weeks prior to the CNB Robbery. Although Tamasa was not
11 present at the CNB Robbery he supplied the weapons and played a leading role in
the planning. Accordingly, Henderson J. imposed a sentence of 14 years'
imprisonment for Robbery, 7 years' imprisonment for the Possession of an
Imitation Firearm – all to run concurrent with his sentence in the West Star
Robbery.



12 11. *Cole's Sentence:* He played a minor role, had no criminal record and was not
13 personally in possession of an imitation firearm. Justice Henderson imposed a
14 sentence of 9 years for the Robbery and 4 years for Possession of an Imitation
15 Firearm.

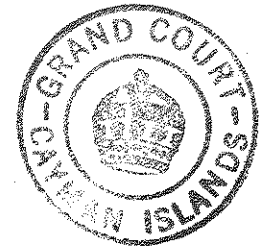
16 12. *Mignott's Sentence;* He carried a weapon and played a leading a role in the
17 robbery. He had previous convictions of a minor nature. Justice Henderson imposed
18 a sentence of 12 years' imprisonment for the Robbery and 7 years for the
19 Possession of an Imitation Firearm.

¹ Statement on Tariffs and Guidelines for Sentencing for Certain Offences 2002

1 13. **Edwards' Sentence:** The Defendant Edwards carried a weapon into the bank. He
2 had no previous convictions. Justice Henderson imposed 13 years' imprisonment
3 for the Robbery and seven (7) years for the imitation firearm.

4 14. **Burton's Sentence:** He had previous convictions for weapon offences and was
5 convicted in the West Star Robbery. Justice Henderson imposed a sentence of
6 fourteen (14) years' imprisonment for the robbery, five (5) years' imprisonment for
7 the Possession of an Imitation Firearm – all to run concurrent with the West Star
8 sentences.

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WEST STAR ROBBERY

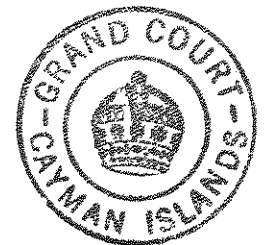
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15. On the 23rd August 2012 the Defendant Marlon Dillon pleaded guilty to Handling Stolen Goods, which goods related to the West Star robbery. The Crown ultimately entered a *Nolle Prosequi* in relation to the Handling charge. The Crown laid a new Indictment, namely Robbery, contrary to s.242(1) of the Penal Code – which is Indictment #58 of 2013. The particulars of that offence are that Marlon Dillon, on the 24th May 2012, in George Town Grand Cayman aided and abetted David Tamasa, George Mignott, Andre Burton, Ryan Edwards and Beaubijon Clarke in committing a robbery at West Star TV Ltd. On the 24th September 2013 Marlon Dillon pleaded guilty to this offence.

16. The facts were that at 3 p.m. on the 24th May 2012 a vehicle pulled up outside the front entrance of the West Star Office on Eclipse Road, George Town. Three men emerged from the vehicle and entered the offices. One was masked and the other two had camouflage and material on their faces. They were armed with what appeared to be firearms. They demanded cash and left – taking a total of CI\$8,269.25 in both US and CI currency.

17. Following a trial, on the 23rd October 2013 the Defendants Burton and Tamasa were found guilty of both robbery and possession of an imitation firearm. The Defendant Edwards was found guilty of aiding and abetting, and, the Defendant Mignott was found not guilty of both counts.

18. Justice Malcolm imposed the following sentences:



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i. *Burton's Sentence:*

- (i) 11 years' imprisonment for Robbery;
- (ii) 6 years' imprisonment for possession of an imitation firearm, concurrent.

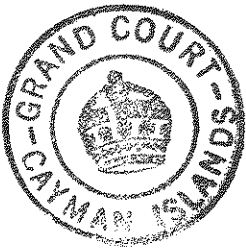
ii. *Tamasa's Sentence:*

- (i) 11 years' imprisonment for Robbery;
- (ii) 6 years' imprisonment for possession of an imitation firearm, concurrent.

iii. *Edwards' Sentence:*

- (i) 5 years' imprisonment for aiding and abetting the Robbery.

19. The DPP has highlighted the fact that, for the offence of Robbery, the maximum sentence is Life Imprisonment, and for the offence of an imitation firearm the maximum is 20 years.



1 *AGGRAVATING FACTORS*

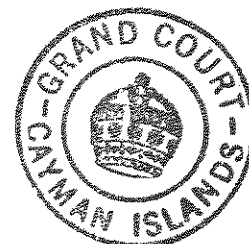
2 20. It is accepted that in both CNB and West Star robberies, the robbers used imitation
3 firearms and threats to cause serious harm which are aggravating factors. It is noted
4 that the Defendants were not capable of causing any injury, neither was there any
5 physical attack on any victim. However, the Court notes that both CNB and West
6 Star robberies were professionally planned commercial robberies. The victims were
7 not aware that the weapons used were imitation and, consequently, the level of
8 terror and fear they were exposed to is exactly the same as if the weapons were not
9 imitation weapons. The robbers caused fear and great shock to the victims in both
10 cases.

11 21. Furthermore, it has to be noted that the CNB Robbery has been the largest in the
12 Cayman Islands to date and may well have the dubious notoriety of being the
13 largest in the Caribbean.

14 22. Robberies of commercial businesses involve several people working to a plan and
15 both Robberies were successful, in that the criminals obtained the monies they set
16 out to steal.

17 *MITIGATION*

18 23. The DPP, Cheryll Richards Q.C. presented the facts for both the CNB and the West
19 Star cases. Ms. Richards has confirmed that, from the Crown's point of view
20 Marlon Dillon has provided very serious and sustained assistance – for the
21 investigations of these two robberies and for other matters including one murder.



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CNB ROBBERY

24. Marlon Dillon’s assistance has led to the successful prosecution of 5 Defendants in the CNB robbery trial. The jury found the 5 Defendants guilty.

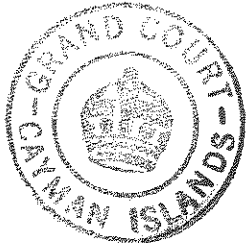
25. In relation to the CNB robbery, the getaway vehicle, namely the Chevrolet Equinox, was found at the home of Marlon Dillon and he was subsequently arrested. During an interview with his counsel Marlon Dillon made a full and frank admission concerning his personal involvement in carrying out the robbery. Marlon Dillon stated that he was not armed with a firearm during the commission of the offence and this is supported by the CCTV evidence.

26. As a direct result of Marlon Dillon’s confession certain persons were arrested and after consultation with the DPP five persons were charged with the offence of robbery of CNB the DPP confirmed to the Court that without Marlon Dillon’s information and assistance these convictions would not have been obtained.

THE WEST STAR ROBBERY

27. Marlon Dillon admitted his involvement in this offence to the police and identified the participants of this robbery in which he played the role of the driver.

28. Marlon Dillon received \$400.00 as his share of the proceeds from the West Star robbery. As a direct result of the information provided to the police by Marlon Dillon three persons were successfully convicted in a Judge Alone trial.



1 *CUC ROBBERY*

2 29. The RCIPS have confirmed that as a direct result of the information provided by
3 Marlon Dillon the offenders in this robbery have been identified. Marlon Dillon had
4 no involvement but has given the RCIPS considerable assistance.

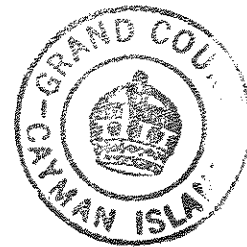
5 *MURDER OF ROBERT MACKFORD BUSH*

6 30. Again Marlon Dillon assisted the RCIPS in relation to this case in which, again, he
7 had no involvement.

8 31. As a result of Marlon Dillon's assistance the Crown succeeded in the prosecution of
9 Brian Borden for the murder of Robert Mackford Bush.

10 *EXTRADITION PROCEEDINGS – RYAN EDWARDS*

11 32. Once again, Marlon Dillon assisted the police in relation to the identity of Ryan
12 Edwards and, as a result of Marlon Dillon's assistance, the Defendant, Edwards,
13 was arrested some 13 days after the robbery. In addition, CI\$34,905 and
14 US\$5,500.00 was recovered. Ryan Edwards was extradited to the Cayman Islands
15 and successfully convicted in both the CNB and West Star Robberies.



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DEFENCE CASE

33. Leading counsel on behalf of the Defendant submits that the Defendant, Marlon Dillon, should be sentenced for his part in three offences.

34. *Pleas:*

i. Counsel submits that, in relation to the CNB Robbery the Defendant entered a guilty plea to the offence of robbery on the 23rd August 2012, less than 2 months after the offence was committed, and then shortly afterwards entered a guilty plea to a joint enterprise for the possession of an imitation firearm.

ii. In relation to the West Star robbery, the Defendant entered a guilty plea to aiding and abetting others in the robbery of the West Star TV Ltd.

35. *Aggravating Factors:*

i. Counsel accepts that, in relation to the CNB Robbery, the possession of the firearm, and the threats made, were aggravating features. However, the Defence highlights the fact that it is fortunate that the weapons were not capable of causing injury, neither was there any physical attack on any of the victims.

36. *Mitigating Factors:*

i. *Early Confessions:* At a very early stage in relation to both the CNB and West Star robberies, the Defendant fully admitted his role in the offences and accepted his culpability. This early admission of criminality at these interviews is a strong mitigating feature.



1 ii. Early Pleas to three charges: The Defendant pleaded guilty to the three charges
2 before this Court.

3 iii. Previous Good Character: The Defendant has no previous convictions.

4 iv. Remorse: The Defendant has exhibited remorse from an early stage and it is in
5 fact this remorse that has driven him to assist the police and give evidence in
6 three separate major criminal trials – including one crime in which he took no
7 part whatsoever. Leading counsel submits that his assistance has led to
8 successful prosecutions in these three major criminal trials. It is accepted by the
9 Crown that without this evidence the co-defendants in the CNB robbery and the
10 West Star robbery would not have been convicted. Furthermore, it is submitted
11 by the Crown that Marlon Dillon’s evidence in the case of the murder of
12 Mackford Bush also led to a conviction.

13 Leading counsel, Mrs. Bennett-Jenkins Q.C. submits that the Defendant’s
14 obvious remorse is, again, a separate and distinct mitigating factor – capable of
15 providing a reduction in sentence which is wholly separate from the fact that a
16 guilty plea was entered

17 v. Significant Assistance to the Police: It is further submitted by the Defence that
18 Marlon Dillon has provided this assistance even though it could clearly result in
19 significant danger to himself and his family, and, this is something that the
20 Court should take into account.



1 Defence also submits that the Defendant has been in custody since the 26th June
2 2012. He has been kept in solitary confinement without any natural light and in
3 a very small space, which has led to a significant deterioration in his physical
4 and mental wellbeing. The Defence points out that Marlon Dillon has had to be
5 taken to the physician for a number of ailments including chronic constipation
6 due to poor diet, loss of pigmentation due to lack of direct sunlight and a fungal
7 infection of his upper torso. Additionally, because his family had to be
8 removed, Marlon Dillon has not seen his wife and children for well over two
9 years.

10 Ms. Bennett-Jenkins Q.C. submits that Marlon Dillon can be regarded as a
11 “super informant” and has highlighted the fact that Mr. Dillon has given
12 evidence in three separate trials and, on each occasion, convictions have
13 followed. As a consequence of all these strong mitigating factors and the high
14 level of assistance given by the Defendant, Ms. Bennett-Jenkins Q.C. submits
15 that this is an appropriate case for the Court to invoke s.41(1) of the Penal Code
16 and record no conviction in relation to the Defendant’s guilty pleas for the two
17 charges in relation to CNB and the one charge in relation to West Star.

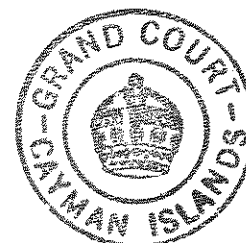


1 *ANALYSIS AND CONCLUSION*

2 *EARLY ADMISSION AND GUILTY PLEA*

3 37. In relation to the West Star robbery, the principal Defendants – Burton and Tamasa
4 – both received sentence of 11 years’ imprisonment. The Defendant Ryan Edwards
5 received a sentence of five (5) years’ imprisonment for the same offence with
6 which Marlon Dillon is charged, namely aiding and abetting David Tamasa, George
7 Mignott, Andre Burton, and Beaubijon Clarke in carrying out the robbery.
8 Accordingly, if Marlon Dillon had been sentenced by Justice Malcolm, it is highly
9 likely that he would have received a custodial sentence of somewhere between 3 to
10 4 years in light of his early admission to the police and his guilty plea.

11 38. In relation to the CNB robbery, Justice Henderson, taking into account the earlier
12 convictions in the West Star robbery, sentenced Tamasa to 14 years and Edwards to
13 13 years. In the CNB Robbery Marlon Dillon was not the ringleader, nor did he
14 actually carry a weapon. Marlon Dillon had played an active role in the CNB
15 Robbery and a lesser role in the West Star Robbery. In light of these periods of
16 imprisonment for his co-Defendants, it is likely that Marlon Dillon would have
17 received a sentence in the range of 8 to 10 years’ imprisonment as a discount for his
18 early guilty plea, leaving aside the question of any assistance to the Crown.



VIR and SIR

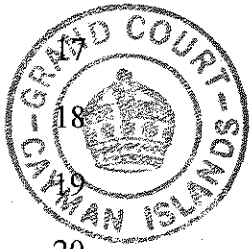
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39. In CNB, the bank suffered a direct financial loss, given that a substantial sum of cash was stolen. Furthermore, management and staff had to spend hundreds of hours investigating, recovering from, analyzing and in meetings about the robbery and implementing tighter controls. It is estimated that the internal time of the executives and the staff dealing with all aspects of the robbery, easily exceeds CI\$100,000.00.

40. In addition, one cannot underestimate the emotional and psychological impact on the staff at the Buckingham Square Branch, and the evidence discloses that some employees have suffered from a mixture of shock, anxiety, fear, humiliation and helplessness.

41. I have reviewed the helpful Social Inquiry Report (SIR) prepared by the DCR officer and the affidavit of Marlon Dillon's wife.

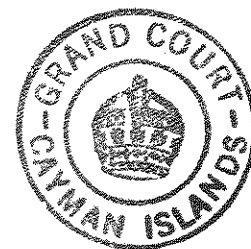
42. Marlon Dillon is a married man with a son and a stepson. Evidence from the SIR and from his wife's affidavit confirms that he is a good husband and father and his family is particularly important to him. The DCR officer states that Marlon Dillon has accepted full responsibility for his participation in these criminal offences and has remained apologetic. Marlon Dillon is a first time offender and has no history of juvenile delinquency. It is the DCR officer's view that Marlon Dillon seemed to have succumbed to negative peer pressure and the prospect of quick and economic gain. The Probation officer confirms that Marlon Dillon has asked to apologise to the employees at the bank, and, she is of the considered view that Marlon Dillon is genuinely remorseful.



1 43. The Court notes that on the 23rd May 2012 the Defendant was a 28 year old married
2 man with 2 children, a good job and no previous convictions. Within less than six
3 weeks the Defendant had participated in two serious robberies leading to three
4 serious criminal convictions. The Court agrees with the Probation Officer's
5 insightful view that the Defendant succumbed to negative peer pressure.

6 *CONDITIONS*

7 44. It is accepted by all parties that Marlon Dillon has lived in fear of his life since
8 providing this crucial information and whilst remaining in police custody for the
9 past two years and 5 months. He also had to be relocated recently for three weeks to
10 another cell which has been described by Defence counsel as similar to dog
11 kennels. Defence counsel has also stated that these cells were described as
12 inhumane by the Commissioner of Police. Furthermore, it is common ground that
13 prisoners should not be detained in these conditions for more than 72 hours. Marlon
14 Dillon spent a period of three (3) weeks in these fairly dreadful conditions. It is fair
15 and accurate to state that Marlon Dillon has been living in conditions far worse than
16 he would have experienced in Northward and this solitary confinement in these
17 conditions constitute punishment for the crimes he has committed.



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ASSISTANCE TO THE RCIPS AND THE DPP

45. As a direct result of Marlon Dillon’s confessions, four (4) Defendants were arrested for the CNB robbery. A fifth Defendant was identified by Marlon Dillon and extradited back to Cayman as a result of the information provided by Marlon Dillon. All five Defendants have been found guilty by the jury and sentenced to imprisonment.

46. In relation to the West Star robbery: As a direct result of the information provided by Marlon Dillon, three (3) persons were convicted.

47. In relation to the CUC robbery: As a direct result of the information provided by Marlon Dillon, 2 offenders have been identified and further investigations are being carried out.

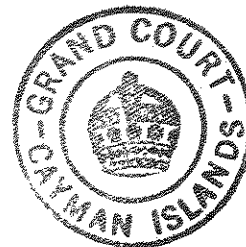
48. In relation to the murder of Robert Mackford Bush: As a direct result of information provided by Marlon Dillon, 2 persons were charged with the murder of Robert Mackford Bush. Again, Marlon Dillon gave evidence in a Grand Court trial and one of the Defendants was found guilty.

49. Senior RCIPS officers have confirmed that as a result of the information supplied by Marlon Dillon a number of recent murder investigations have progressed and persons charged with serious offences. RCIPS Officers have stated, *“This information, together with corroborative material has assisted the RCIPS in taking some the Cayman Islands most violent and prolific offenders off the streets and away from the public.”*



1 In addition the RCIPS has confirmed that the information that Marlon Dillon has
2 supplied has come at great personal cost to both himself and his immediate family.
3 His wife and children are all “off island” for their own safety and welfare and this
4 relocation has caused great stress on their wellbeing and the stability of their
5 family. RCIPS officers state: *“There is no doubt that the information supplied
6 Marlon Dillon to the RCIPS has been crucial to identifying, arresting, charging,
7 and convicting a number of very serious criminals.”*

8 50. In relation to the murder investigation and trials, the RCIPS officers have confirmed
9 that Marlon Dillon has never been promised or given anything, and, furthermore,
10 Marlon Dillon did not ask for anything nor has he ever given the impression that he
11 is cooperating in order to receive anything in return. Marlon Dillon’s information in
12 relation to the murder has been described as *“entirely crucial”* and as having
13 brought some solace to the family of Robert Bush as well as to the residents of the
14 Cayman Islands. The senior RCIPS officers are of the confirmed view that,
15 *“Marlon Dillon has made a considerable step in rehabilitating himself and showing
16 remorse for his offending behaviour.”*



1 *THE LAW*

2 51. In England, assistance to law enforcement agents is governed by the Serious
3 Organised Crime and Police Act 2005 (SOCPA). In the Cayman Islands we do not
4 have any corresponding legislation.

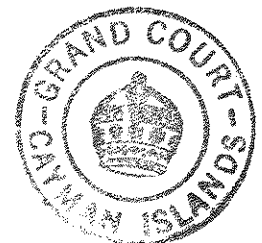
5 52. The English Court of Appeal in the case of *R v. P and Derrick Stephen Blackburn*²
6 reviewed the case law in relation to Defendants assisting investigations and
7 prosecutions – both before the SOCPA and since. This Court notes that the UK
8 statute did not include any direct provisions suggesting the level of discount
9 appropriate to be provided to the Defendant who entered into and performed an
10 agreement to assist the prosecution. At Chapter E 1.13 of *Blackstone's Criminal*
11 *Practice 2014*, the learned editors state that s.73 and 74 of the SOCPA are silent as
12 to the appropriate extent of any reduction to reflect actual or promised assistance by
13 the offender. The former Lord Chief Justice, Lord Judge, in *R v. P and Derrick*
14 *Stephen Blackburn* stated that the pre SOCPA Court of Appeal authorities are still
15 relevant despite the introduction of the statutory scheme.

16 53. The learned editors of the *Archbold 2014* review the case law provided other than
17 in accordance with the new SOPCA 2005 Act. At paragraph 5-139 the learned
18 editors of Archbold refer to *R v. P and Derrick Stephen Blackburn* and *R v.*
19 *Sinfeld*³ and state that an offender who assists the police by giving information that
20 leads to the apprehension and prosecution of his associates or of other offenders
21 may expect a discount – possibly substantial – from his sentence.

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² [2008] 2 Cr. App R. (S) 16

³ 3 Cr App R (S) 258

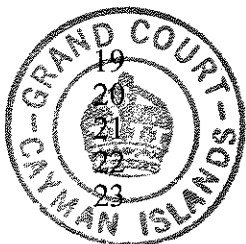


1 54. In *R v. Michael King*⁴ the English Court of Appeal set out some guidelines
2 regarding the appropriate discounts for those who assist the authorities in their
3 investigation and prosecution of offenders. Stating that it would be impossible to
4 lay down any hard and fast rule, the Lord Chief Justice, Lord Lane, said:

5 *“The amount by which that figure should be reduced would depend on a*
6 *number of variable features; the quality and quantity of the material disclosed*
7 *... its accuracy and his willingness to confront other criminals or give evidence*
8 *against them.”*

9
10 The Lord Chief Justice, giving the opinion of the Court of Appeal stated that there
11 should be an expectation of some substantial reduction of what otherwise would be
12 the proper sentence and suggested that the amount would vary between a half and
13 two-thirds of the appropriate sentence.

14 55. Some three years later the English Court of Appeal in *R v. Sivan*⁵ confirmed that it
15 was a well-established feature of sentencing practice that credit should be given to a
16 Defendant in certain circumstances for assistance or information given to the
17 authorities. The Court of Appeal said that the matters that should be taken into
18 account are:



19 *“The nature and the effect of the information, did it bring to justice persons*
20 *who otherwise would not have been brought to justice, and the degree of the*
21 *assistance provided, namely, was the offender prepared to give evidence, and,*
22 *finally, the degree of risk to which the defendant had exposed himself and his*
23 *family.*

24 *Within those limits the judge must bring himself to tailor the sentence so as to*
25 *punish the Defendant, but at the same time reward him as far as possible for*
26 *the help he had given, in order to demonstrate to offenders that it was worth*
27 *their while to disclose the criminal activities of others for the benefit of the law-*
28 *abiding public in general.”*

⁴ 7 Cr. App R. (S) 227
⁵ 10 Cr. App R. (S) 282

1 56. Finally, in considering the appropriate reduction, there are authorities to suggest
2 that the judge should consider the reduction for the assistance separate and apart
3 from any reduction for a plea of guilty. However, in *R v. Sehitoglu (Dervis)*⁶ the
4 English Court of Appeal stated that the sentencer should determine the final
5 sentence by calculating a single discount – taking into account all the relevant
6 factors including the plea of guilty and the assistance given to the authorities. I
7 follow and adopt this approach.

8 57. In *R v. P and Blackburn* the Lord Chief Justice, Lord Judge, endorsed the totality
9 principle when it came to sentencing in cases of this nature and stated that the
10 normal level for reduction would continue to be a reduction of between a half and
11 two-thirds.

12 58. I have reviewed and adopted the Judgment of the then President of the English
13 Court of Appeal, Lord Judge in *Blackburn*. At paragraph 22 Lord Judge stated that
14 those who assist the law enforcement authorities will receive reduced sentences in
15 what he described as a “*longstanding and entirely pragmatic convention.*” Lord
16 Judge went on to state at paragraph 22,

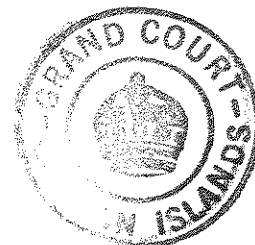
17 *“The stark reality is that without it major criminals who should be convicted*
18 *and sentenced for offences of the utmost seriousness might, and in many cases,*
19 *certainly escaped justice.”*

20

21 And Lord Judge continued:

22

23



⁶ [1998] 1 Cr. App R. (S) 89 CA

1 *“The solitary incentive to encourage cooperation is provided by a reduced*
2 *sentence and the common law and new statute (in the UK) have accepted that*
3 *this is a price worth paying to achieve the overwhelming and recurring public*
4 *interest that major criminals should be caught and prosecuted to conviction.”*

5
6 I now refer to the often-cited passage in Lord Judge’s judgment in **Blackburn** at
7 paragraphs 38 and 39 where he states:

8 *“The first principle is obvious. No hard and fast rules can be laid down for*
9 *what as in so many other aspects of the sentencing decision is a fact-specific*
10 *decision.*

11 *The first factor in any sentencing decision is the criminality of the Defendant,*
12 *weight being given to aggravating and mitigating features as there may be.*
13 *Thereafter the quality and quantity of the material provided by the Defendant in*
14 *the investigation and subsequent prosecution of crime falls to be considered.*
15 *Addressing this issue particular value should be attached to those cases where*
16 *the Defendant provides evidence in the form of a witness statement or is*
17 *prepared to give evidence in any subsequent trial, and does so, with added*
18 *force, where the information either produces convictions for the most serious*
19 *offences, including terrorism and murder, or prevents them, or which leads to*
20 *disruption to or indeed the breakup of major criminal gangs. Considerations*
21 *like these then have to be put in the context of the nature and extent of the*
22 *personal risks to, and potential consequences faced by the Defendant and the*
23 *members of his family.”*

24
25 This could be written for this case.

26 At paragraph 41 Lord Judge went on to state:



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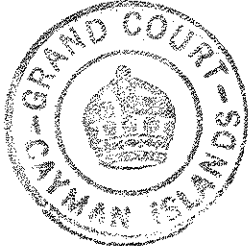
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"We were asked to consider the possibility of a discount in an exceptional case which in effect was that the Defendant would not serve any sentence at all. We cannot envisage any circumstances in which the Defendant who has committed and for these purposes admitted serious crimes can or should escape punishment altogether. The process under sections 73 and 74 of the SOCPA 2005 does not provide immunity from punishment and, subject to appropriate discounts, an effective sentence remains a basic characteristic of the process. Issues of immunity are addressed at section 71. What the Defendant has earned by participating in the written agreements system is the appropriate reward for the assistance provided to the administration of justice and to encourage others to do the same. The reward takes the form for the discount for the sentence which would otherwise be appropriate. It is only in the most successful cases that the appropriate level of reduction would exceed three quarters of the total sentence which would otherwise be passed and the normal level will continue as before to be a reduction of somewhere between one half and two-thirds of that sentence."



1 *SECTION 41 OF THE PENAL CODE*

2 59. Leading counsel on behalf of the Defendant has repeated the DPP's submission that
3 her client has given significant, serious and sustained assistance to the Crown in
4 both the CNB and West Star robberies and other very serious criminal offences
5 committed in the Cayman Islands. Mrs. Bennett-Jenkins Q.C. has submitted that the
6 Defendant has done a great service to the people of the Cayman Islands at great
7 personal cost to himself and his immediate family. Leading counsel describes
8 Marlon Dillon's assistance as the very highest level of assistance imaginable, and
9 asks the Court to consider invoking the provisions of s.41(1) of the Penal Code,
10 which allows for the discharge of an offender without punishment.

11 60. Section 41(1) of the Penal Code reads:

12 *"41. (1) Where, in a trial, a court thinks that the charge is proved, but is of the*
13 *opinion that, having regard to the character, antecedents, age, health or mental*
14 *condition of the accused, or to the trivial nature of the offence or to the*
15 *extenuating circumstances in which the offence was committed, it is inexpedient*
16 *to inflict any punishment, the court may, without proceeding to conviction,*
17 *make an order either -*

18 (a) *discharging the accused absolutely; or*

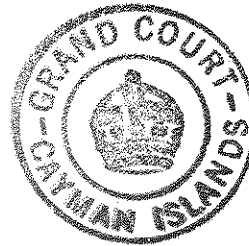
19 (b) *if the court thinks fit, discharge the accused subject to the*
20 *condition that he commits no offence during such period not*
21 *exceeding three years from the date of the order, as may be*
22 *specified in the order."*
23

24 61. In response to the s.41(1) submission made by Leading counsel for the Defendant,
25 the DPP opposes such an approach. Ms. Richards Q.C. submits that, in light of the
26 seriousness of the offences committed by the Defendant in the CNB and West Star
27 robberies, it would be inappropriate to invoke s.41(1) of the Penal Code.

28

1 62. I find that the Marlon Dillon has shown genuine contrition and remorse.
2 Furthermore, he admitted his guilt at the earliest opportunity and provided the
3 police with vital information leading to the arrest and conviction of serious
4 criminals. I also find that the Defendant has shown considerable courage in taking
5 this action at risk to himself and his immediate family. However, both the CNB and
6 the West Star robberies were robberies of a most serious nature. Therefore I find
7 that to invoke s.41(1) would be inappropriate in all the circumstances of this case.

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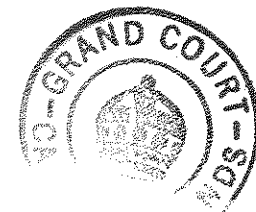


1 *CONCLUSION*

2 63. I understand that the Defendant has been told by his attorneys at various stages in
3 these proceedings that there is no requirement for him to assist the Crown or to give
4 evidence in any trial against either his co-defendants or against any other
5 Defendants in cases to which he has no involvement. In relation to the CNB trial,
6 Marlon Dillon was in the witness box for some three days and was vigorously cross
7 examined by five experienced leading counsel on behalf of the other Defendants. It
8 is clear that the jury accepted his testimony and found the other 5 Defendants guilty
9 of the charges laid against them. In my view this constitutes assistance at the very
10 highest level.

11 64. In addition to Marlon Dillon's assistance in the CNB robbery case, Marlon Dillon
12 provided assistance to the Crown and the police in the West Star robbery – resulting
13 in the conviction of three offenders.

14 65. Again, Marlon Dillon gave evidence in a murder trial, at the end of which the
15 Defendant was found guilty of the most serious crime on our statute books. Marlon
16 Dillon's assistance in all these cases constitutes exceptional sustained assistance to
17 the police and the Crown in their continued efforts to fight serious crime in the
18 Cayman Islands and put criminals behind bars.

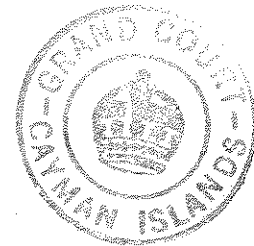


1 66. The court is faced with one fundamental and difficult issue. The Court has to
2 balance the requirement of punishment for the crimes this Defendant committed,
3 with the reward for his voluntary and courageous assistance. In my view, this is an
4 exceptional case and deserves a very significant discount. Marlon Dillon has
5 provided witness statements disclosing the identities of criminals who have
6 committed serious crimes in the Cayman Islands. To adopt Lord Lane's dicta in
7 *Sivan*, it is clear from the RCIPS statements that Marlon Dillon has assisted in
8 bringing to justice persons who, otherwise, would not have been brought to justice,
9 and I hope that it will demonstrate to others that it is worth their while to disclose to
10 the RCIPS the activities of criminals in the Cayman Islands for the benefit of our
11 law abiding citizens and the community in general.

12 67. Accordingly, I impose the following terms of imprisonment:

- 13 i. 3 years' imprisonment in relation to the charge of Robbery on Indictment
14 #59/2012;
- 15 ii. 18 months' imprisonment for Possession of an Imitation Firearm on Indictment
16 #59/2012; and
- 17 iii. 18 months' imprisonment in relation to the charge of Robbery on Indictment
18 #58/2013.

19 These sentences are to run concurrently and time spent in custody is to be deducted
20 from the total sentence of three (3) years.



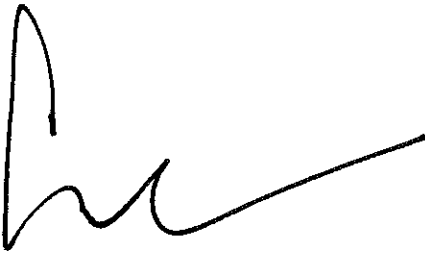
1 68. Marlon Dillon's assistance has ensured that major criminals in the Cayman Islands
2 have been convicted and sentenced for offences of the utmost seriousness and,
3 accordingly, in my view, he is entitled to this significant discount to ensure that he
4 is able to rejoin his wife and children at the earliest possible time.

5 69. I agree with leading counsel for the Defence that Marlon Dillon has done a great
6 service to the people of the Cayman Islands at considerable risk to himself and his
7 family. Although this Court plays no role as to what happens to Marlon Dillon after
8 he serves his time in custody, I sincerely hope that upon his release, the authorities
9 here and elsewhere will use their best endeavours to ensure that the Defendant can
10 be reunited with his family.

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13 **Dated this the 6th November 2014**

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Honourable Mr. Justice Charles Quin Q.C.
Judge of the Grand Court

